

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARVIN FRANK ROBINSON,

Petitioner,

v.

Case No. 18-CV-1566

MILWAUKEE COUNTY HOUSE OF CORRECTION,

Respondent.

REPORT AND RECOMMENDATION

Marvin Frank Robinson, who is currently incarcerated at the Milwaukee county House of Correction, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket # 1). For the following reasons, I recommend that his petition be denied.

One who pursues relief under 28 U.S.C. § 2254 must have exhausted the remedies available in the courts of the state. 28 U.S.C. § 2254(b)(1)(A). State remedies are ordinarily not considered exhausted if there are any currently available and adequate procedures for the individual to present his claim. 28 U.S.C. § 2254(c). In his petition, Robinson admits that he did not appeal from his judgment of conviction or seek any other state post-conviction relief. (Docket # 1 at II–III.) In fact, Robinson has not even been sentenced yet. (*Id.* at I(D).) Because Robinson has not availed himself of the opportunity to appeal his convictions through existing and appropriate state procedures, he cannot be said to have exhausted his available state

remedies. Therefore, I recommend that Robinson's petition under § 2254 be dismissed without prejudice.¹

NOW, THEREFORE, IT IS RECOMMENDED that Robinson's petition for writ of habeas corpus pursuant to 18 U.S.C. § 2254 (Docket # 1) be **DISMISSED**.

Your attention is directed to General L.R. 72(c), 28 U.S.C. § 636(b)(1)(B) and Federal Rules of Criminal Procedure 59(b), or Federal Rules of Civil Procedure 72(b) if applicable, whereby written objections to any recommendation or order herein, or part thereof, may be filed within fourteen days of the date of service of this recommendation or order. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of a party's right to appeal. If no response or reply will be filed, please notify the Court in writing.

Dated at Milwaukee, Wisconsin this 11th day of October, 2018.

BY THE COURT

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge

¹ Because the respondent has not yet appeared and had an opportunity to consent or refuse magistrate judge jurisdiction, I issue a report and recommendation regarding the screening of Robinson's petition. *See Coleman v. Labor and Industry Review Commission*, 860 F.3d 461 (7th Cir. 2017).